

§ 7A(c)(4) exemption

JD

August 9, 1990

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Premerger Notification Office
Room 203
Federal Trade Commission
Washington, DC 20580

Hart-Scott-Rodino (HSR") Filing -
Resolution Trust Corporation ("RTC") Transaction

Dear Mr. Dahnke:

This letter requests confirmation of the opinion you expressed to me on the telephone recently on behalf of the Staff of the Federal Trade Commission ("FTC") relating to the premerger notification and waiting period requirements of HSR in connection with transactions with the RTC.

The facts are as follows:

[REDACTED] a national banking association [REDACTED] has agreed in principle to purchase approximately \$30,000,000 of second mortgage receivables ("Assets") of a failed savings and loan association, [REDACTED]

[REDACTED] under the receivership of the RTC. [REDACTED]

[REDACTED] is a newly established association, under the conservatorship of the RTC, formed to be the owner of all of the assets of [REDACTED] that were "passed-through" to [REDACTED]. It is anticipated that [REDACTED] will be the transferee of the Assets to [REDACTED]. Attached to this letter, for your reference on these matters, are Office of Thrift Supervision Orders [REDACTED]

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Title 15, Section 18(a)(c)(4) of the United States Code provides an exemption from the premerger notification and waiting period requirements of HSR for transactions that are "transfers to or from a Federal agency or State or political subdivision thereof." Since both [REDACTED] and [REDACTED] are under the receivership and conservatorship, respectively, of the RTC, a Federal agency established under the the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183, the Assets transferred to [REDACTED] in this proposed transaction will be "from a Federal agency" and, therefore, exempt from HSR.

I also refer you to Title 12, Sections 1821(c)(1), (2) and (d) of the United States Code which discuss generally the powers of a receiver and conservator under FIRREA.

The undersigned is of the opinion that the transaction is exempt from the requirements of HSR and, in our recent telephone conversation, you said that the Staff of the FTC was of the same opinion.

If you would be so kind as to confirm the position of the FTC by return mail, I would be most appreciative. The referenced transaction is scheduled to take place in the beginning of October 1990, therefore, a prompt response is requested.

If you have any questions about this matter, please do not hesitate to contact me. Additionally, you will notice that I have sent a copy of this letter to the Antitrust Division of the Department of Justice for its information.

Very truly yours,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: Director of Operations
Antitrust Division
Room 3218
Department of Justice
Washington, DC 20530

Advised that exemption 7A(c)(4) was available to cover a transaction by a newly estab. association under the conservatorship of the RTC.

OFFICE OF THRIFT SUPERVISION

Appointment of Receiver
[REDACTED]

RECITALS

Order Number [REDACTED]

Date: [REDACTED]

A. [REDACTED] is a federally chartered savings association, the accounts of which are insured by the Federal Deposit Insurance Corporation ("FDIC").

B. Pursuant to § 5(d)(2)(H)(ii) of the Home Owners' Loan Act of 1933 ("HOLA"), as amended by § 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Director of the Office of Thrift Supervision ("Director") shall appoint only the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, as appropriate, as receiver for a savings association for the purpose of liquidation or winding up the affairs of such savings association.

ORDER

1. The Director, upon consideration of the administrative record, hereby finds and determines that the [REDACTED] is insolvent in that its assets are less than its obligations to its creditors and others, including its members; and that a ground for the appointment of a receiver for the [REDACTED] therefore exists under § 5(d)(2)(A) of HOLA, as amended.

2. The Director hereby appoints the Resolution Trust Corporation as receiver for the [REDACTED] for the purpose of liquidation, pursuant to subdivisions (A), (E), and (H)(ii) of § 5(d)(2) of HOLA, as amended.

[Signature]
Director

OFFICE OF THRIFT SUPERVISION

Issuance of Federal Charter

RECITALS

Order Number [REDACTED]

Date: [REDACTED]

[REDACTED], is a savings association chartered under the laws of the United States, the accounts of which are insured by the Federal Deposit Insurance Corporation ("FDIC").

B. The Director of the Office of Thrift Supervision (respectively, "Director" and "OTS"), by Order No. [REDACTED] dated [REDACTED] appointed the Resolution Trust Corporation as Receiver for the [REDACTED] A

C. Pursuant to § 21A(b)(4) of the Federal Home Loan Bank Act, as added by § 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the Resolution Trust Corporation shall possess the powers provided the Federal Deposit Insurance Corporation in §§ 11, 12, and 13 of the Federal Deposit Insurance Act, as amended by § 212, 213, 214, 216 and 217 of FIRREA.

D. Pursuant to § 11(d)(2)(F)(i) of the Federal Deposit Insurance Act, as amended, as incorporated by § 21A(b)(4) of the Federal Home Loan Bank Act, as amended, the Resolution Trust Corporation as Receiver, by application to the Director, may organize a new Federal savings association to take over such assets or such liabilities as the Resolution Trust Corporation may determine to be appropriate.

E. The Resolution Trust Corporation as Receiver of the [REDACTED] has submitted an application to the Director to organize [REDACTED], a new Federal savings association to take over such assets or such liabilities as the Resolution Trust Corporation may determine to be appropriate.

ORDER

1. The Director hereby authorizes the incorporation of [REDACTED] and a Federal charter therefor is hereby authorized and shall be issued by the General Counsel or a Deputy General Counsel of the OTS.

2. The Bylaws in the form or substantially in the form attached to this Order are hereby approved for [REDACTED]

3. Prior to the appointment or election of a board of directors of [REDACTED] the Resolution Trust Corporation may, in addition to any other powers granted by applicable law, exercise the powers of the board of directors.

4. [REDACTED] shall transact business only as an insured depository institution.

5. A Certificate is hereby issued to the Federal Deposit Insurance Corporation pursuant to § 5(a)(2) of the Federal Deposit Insurance Act, as amended, and such Certificate is attached to this Order.

6. The maintenance of the home and branch offices of [REDACTED]

[REDACTED] as home and branch offices of [REDACTED] is hereby approved.


Director

OFFICE OF THRIFT SUPERVISION

Appointment of Conservator for
[REDACTED]

RECITALS

Order Number [REDACTED]

Date: [REDACTED]

A. [REDACTED] is a federally chartered savings association, the accounts of which are insured by the Federal Deposit Insurance Corporation.

B. The Director of the Office of Thrift Supervision ("Director"), by Order No. [REDACTED], dated [REDACTED], A appointed the Resolution Trust Corporation as Receiver for the Association, and on application of the Resolution Trust Corporation by Order No. [REDACTED], dated [REDACTED] B, authorized the incorporation of and the issuance of a federal charter for [REDACTED]

[REDACTED] a Federal savings association organized to take over assets and liabilities of the Association.

C. Pursuant to § 5(d)(2)(B)(i) of the Home Owner's Loan Act of 1933 ("HOLA"), as amended by § 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the Director may, without any requirement of notice, hearing or other action, appoint a conservator or receiver for a Federal savings association if the association, by resolution of its board of directors or of its members, consents to such appointment.

D. Pursuant to § 5(d)(2)(H) of the HOLA, as amended, the Director, at the Director's discretion, may appoint the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, as appropriate, as conservator for a savings association.

E. The Resolution Trust Corporation, which organized [REDACTED] by application to the Director, pursuant to § 11(d)(2)(F) (i) of the Federal Deposit Insurance Act, as amended by § 212 of FIRREA, exercises the powers of the board of directors of [REDACTED]

ORDER

1. Effective upon receipt of the consent of [REDACTED] by resolution of its board of directors or of its members, or by resolution of the Resolution Trust Corporation exercising the powers of a board of directors of New Federal, the Director hereby appoints the Resolution Trust Corporation as conservator for [REDACTED] ("Conservator"), not for the purpose of liquidation, pursuant to subdivisions (B) and (H) of § 5(d)(2) of the HOLA, as amended.

2. The Resolution Trust Corporation as Conservator for [REDACTED] shall have the powers of a conservator for a Federal savings association granted under HOLA, as amended, the Federal Deposit Insurance Act, as amended, and FIFREA.


Director